86-1418

Supreme Court, U.S.
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NO.

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1986

RICHARD J. McDONALD, Petitioner,

v.

THE BOARD OF EQUALIZATION,
THE FRANCHISE TAX BOARD,
OF THE STATE OF CALIFORNIA
Respondents

PETITION FOR WRIT OF CERTIORARI

TO THE

COURT OF APPEALS OF THE

STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

RICHARD J. McDONALD
6754 Clybourn #204
North Hollywood, Ca. 91606
Tel. (818) 761-7697
IN PROPRIA PERSONA

EDITOR'S NOTE

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QUESTION PRESENTED FOR REVIEW

Whether the State may, consistent with the concepts of due process, refuse to disclose information that will reveal the nexus that makes the individual a "subject of the State", thus denying him his vested property rights and liberties that are guaranteed by the State and Federal Constitutions and would this refusal constitute a violation of the Constitutionally protected right to be informed prior to the deprivation of rights and liberties, as it has been established under due process guidelines?

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PETITION FOR WRIT OF CERTIORARI

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SECOND APPELLATE DISTRICT

PRAYER

TO THE HONORABLE CHIEF JUSTICE

AND ASSOCIATE JUSTICES OF THE SUPREME

COURT OF THE UNITED STATES:

May It Please The Court:

The Petitioner, Richard J. McDonald, respectfully prays that a writ of certiorari issue to review the

judgment of the Court of Appeals, Second Appellate District.

OPINION BELOW

The opinion of the District Court of Appeals, Second Appellate District, by order of the court, was not to be published. A copy of the opinion is attached (see Appendix B).

The order of the California Supreme Court denying a Petition for review is not reported; however a copy of the order is attached hereto (see Appendix C.)

JURISDICTION

The final order of the California Supreme Court denying review was entered on 17 December 1986. This Petition is filed within ninety days of the order of the California Supreme Court. This Courts jurisdiction is invoked under 28 U.S.C. §1331 (a).

CONSTITUTIONAL PROVISIONS INVOLVED

UNITED STATES CONSTITUTION

AMENDMENT V

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a grand jury, except in cases arising in the land or naval forces, or in the militia, when in actual service in time of war or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

CONSTITUTION OF THE STATE OF CALIFORNIA

Sec. 15. The defendant in a criminal cause has the right to a speedy public trial, to compel attendance of witnesses in the defendant's behalf, to have assistance of counsel for the defendant's defense, to be personally present with counsel, and to be confronted with the witnesses against the defendant. The legislature may provide for the deposition of a witness in the presence of the defendant and the defendant's counsel.

Persons may not twice be put in jeopardy for the same offense, be compelled in a criminal cause to be a witness against themselves, or be deprived of life, liberty, or property without due process of law. [New section adopted November 5, 1974.]

STATEMENT OF THE CASE

The Petitioner Richard J. McDonald, a natural born citizen of the State of California, was having a dispute with the Board of Equalization regarding his status, where the Board of Equalization arbitrarily refused to accept the evidence offered, or to recognize the decisions of the courts, refused to give due process and summarily dismissed the hearing without making a determination of status and jurisdiction.

The Petitioner McDonald, on January 9, 1986, filed a request for a Declaratory Judgment as to his Status, whether he was a freeman and a sovereign individual as is defined in the U.S. and State Constitutions or a State created juristic person and a "subject of the State". The State refused to address the issues, and refused to reveal the "secret

nexus" that they claim exists, the trial court, then approved of the lack of due process by creating a "special privilege" of withholding information, to the detriment of the Petitioner's fundamental rights. After sustaining the demurrer (which admitted all allegations), the Court made a ruling that the Petitioner was a taxpayer, without any evidence to establish this fact, nor was any evidence presented to create a nexus, wherein the Petitioner would be a juristic person and then a "subject and then a taxpayer". Thus again the Petitioner was denied due process of law.

The Petitioner Appealed this ruling to the Court of Appeals, Second Appellate District on 17 March 1986. (Appeal was timely). During oral argument the Presiding Judge Roth, in response to the questions "why won't

someone tell me what the nexus is, and why am I being denied due process?" Judge Roth replied "this court will not tell you either, you must take it before a higher court." Again being denied due process.

The Petitioner then submitted a timely Petition for review to the California Supreme Court on October 17, 1986, on the verbal orders of the Appellate Court. On December 17, 1986, the California Supreme Court refused to hear the case and the petition was denied without comment (See exhibit C). Again the Petitioner was denied due process of law, after being told to take it to a higher court.

REASON FOR GRANTING THE WRIT

THIS PETITION PROVIDES THIS COURT AN OPPORTUNITY TO CLARIFY THE GUIDELINES OF DUE PROCESS TO BE GIVEN BY THE STATES AND TO ADDRESS A FUNDAMENTAL QUESTION OF STATUS WHICH IS PARAMOUNT TO INTENT OF THE CONSTITUTION OF THE UNITED STATES AND TO THE CONSTITUTION OF THE STATE OF CALIFORNIA.

The Petitioner is a natural born white male Sovereign citizen identified in the Preamble to the United States Constitution, and as the Heir de jure as enumerated in Dred Scott v. Sanford, 19 How. 393, and as such is a citizen of the State of California, and thus is a United States Citizen, not emanating from the 14th Amendment or its counterpart Article I, §7 of the California Constitution [as amended Nov. 6, 1979] nor a federal

citizen under "federal laws" Hague v. CIO, 307 U.S. 496, 520. As the Social Security number has been rescinded and revoked due to constructive fraud (non-disclosure, see clerks trans. pps. 16-55)

That there are two separate and distinct classes of citizenships has been well settled by this Court, that one is the de jure citizen as identified by the Preamble to the U.S. Constitution, one of "We The People" who has inalienable rights, and the other is a citizen-subject created by an act of Congress, and only receives privileges. The Petitioner is of the former class, a de jure citizen.

The State Board of Equalization refused to accept the evidence offered, and refused to make a determination of the status of the Petitioner McDonald,

thus denying due process. The essential requirement of due process is met when an administrative body is required to determine existence or nonexistence of necessary facts before any determination is made. Daniel v. Police Comrs., (1961) 190 C. A. 2d. 566, 12 Cal Rptr. 266. Due Process is not interested in mere technical formalism, substance determines whether due process was afforded. O'Reilly v. Board of Medical Examiners, (1967) 66 C.2d. 381, 58 Cal. Rptr. 7, 426 P.2d. 167, Cert. Den. 390 U.S. 944, 19 L. Ed.2d. 1132, 88 S. Ct. 1019

The State has maintained that the use of "secret" laws to deprive me of my common-law citizenship is permissable, this is in error; as the very basics of due process require that a citizen be informed of the reason why he is being denied access to his fundamental and

basic rights.

I cannot be convicted of a violation of the Uniform Code of Military Justice if I am not subject to that law, in the same context I cannot be convicted of being a "subject of the State", through voluntariness, if there are "secret" attachments to various statutes that create a "Subject of the State", especially where I have not consented to nor was I informed of such attachments. "A statute does not satisfy the due process requirement of giving decent advance notice of what it is which, if happening, will be visited by punishment, so that men may presumably have an opportunity to avoid the happening..." Screws v. U.S., (1945) 325 U.S. 91, 154.

The Petitioner McDonald has been deliberately denied due process of law at

every stage in this case. The State in order to maintain "Titles of Nobility" and to conceal the constructive fraud that is in operation by the State, refuses to address the issues, and will not deny the allegations, as the truth cannot be denied.

The Petitioner does have the right to know the accusations against him, and the State does have the duty to inform me of the charges against me that deprive me of my rights. But, the State in concert with the judiciary are in fact in operation stating "SHUT UP SLAVE, YOU DO NOT HAVE THE RIGHT TO ASK QUESTIONS, OR TO KNOW ANYTHING".

The State has continued to and will continue to deprive the Petitioner of his vested rights and property, never informing me of the reason why I am being

treated as a "Subject of the State" and not a sovereign citizen of the State of California. This is accomplished by the absolute refusal to give due process of law as it has been established by the 5th Amendment to the U.S. Constitution, and Article I, §15, of the California Constitution. The Petitioner's de jure citizenship is a vested property right and "Notice is required before property interests are disturbed..." Lambert v. California (1958) 355 U.S. 225, 78 S. Ct. 240, 2 L.Ed.2d. 228.

The State is apparently operating under the false impression that the 14th Amendment has superceded and ruled null and void the Declaration of Independence, and the full intent of the Constitution of the United States. Also that Article I, §7 of the California Constitution has overturned the intent of

the Original Constitution of California (1849), in addition to the U.S. Constitution, by creating "subjects" instead of sovereign freemen, this is also in error.

The State working in concert with the judiciary, are deliberately refusing to give due process to the Petitioner, in order to coverup (ala Watergate) a constructive fraud, wherein the State has deliberately defrauded the Petitioner McDonald, in the past, out of his de jure citizenship. A cursory reading of the record on file will establish beyond a reasonable doubt of the deliberate, calculated, utilization of non-disclosure, misrepresentation, deceit, coercion and intimidation to create a 2nd class citizenship within the State and thus destroy, the intent of our founding fathers to create a nation of

freemen, not subjects of the king.

The Appellate Court in its' written opinion (see Appendix B-4) stated "for good or ill, ..." This is an indication that the Petitioner McDonald may possibly be right in questioning the application of the statute law as it pertains to him.

In addition the court stated: "Given the seriousness of the choices facing him...", (See Appendix B-6). The choices available to me are similar to asking a man standing before the firing squad, "Do you want a blindfold?". He still gets shot dead no matter what the choice, this is like having no choice at all.

It was held in People v. Escamilla, (1976) 135 Cal. Rptr. 466, 65

C. A. 3rd. 558; that if a magistrate acted as a rubber stamp for the police the whole purpose of due process would be defeated. Yet, in this instant case the courts have operated as a rubber stamp for the State, blantantly denying due process at every turn by allowing the state to refuse to bring forth the information that would be required for the State to maintain its position, thus the Petitioner is treated as a "subject of the State" to the detriment of the rights of the Petitioner.

It was held in Giglio v. U.S., (1972) 405 U.S. 150, that it is well established that concealment from a court and from jurors of known revelant and material evidence by the prosecution or the presentation of false evidence is a violation of due process.

In reviewing a case in which

federal constitutional rights are asserted, the United States Supreme Court must inquire not merely whether those rights have been denied in express terms but also whether they have been denied in substance and effect, and must review independently both legal issues and factual matters with which they are commingled. Oyama v. State of California, (1948) 332 U.S. 633, 68 S. Ct. 269, 92 L.Ed. 249; Palko v. Connecticut, (1937) 302 U.S. 319, 58 S. Ct. 149, 82 L.Ed. 288; Napue v. Illinois (1959) 360 U.S. 264, 79 S. Ct. 1173, 3 L.Ed.2d. 1217; 47 Cal. Law Rev. 238. In Palko v. Connecticut, supra, the test laid down was whether the particular right is basic in a free society - "of the very essence of a scheme of ordered liberty" - so that to abolish it is to violate a principle of justice so rooted in the traditions and conscience of our

people as to ranked as fundalental. Also in Hurtado v. California, 110 U.S. 516, 528, it was concluded, that the court "not look [to] particular forms of procedure, but to the very substance of individual rights to life, liberty and property".

CONCLUSION

Thus for the foregoing reasons and facts the Petitioner respectfully requests that a Writ of Certiorari be issued to the Court of Appeals State of California, Second Appellate District.

Dated 27 Feb '87

Richard J. McDonald
In Pro Per, Sui Juris

APPENDIX A

JOHN K. VAN DE KAMP, Attorney General
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And State Board of Equalization

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

RICHARD J. McDONALD, Plaintiff, V. THE BOARD OF EQUALIZATION, THE FRANCHISE TAX BOARD OF THE STATE OF CALIFORNIA Defendants.	No. NCC 28878B ORDER OF DISMISSAL

The demurrer, motion to strike and request for attorneys' fees (Code Civ. Proced. § 128.5) and penalty assessment (Rev. & Tax. Code §§ 19414) of defendant Franchise Tax Board of the State of California and defendant State Board of Equalization of the State of California ("defendants") in response to the Demand for Declaratory Judgment of plaintiff

Richard J. McDonald ("plaintiff") came on regularly for hearing on March 7, 1986, in Department NCB 204 of the above-entitled Court before the Honorable Thomas C. Murphy, Judge, Presiding;

Plaintiff appeared in propria persona and John K. Van de Kamp, Attorney General appeared for defendants;

The Court having considered the pleadings on file and the arguments presented and having sustained, without leave to amend, defendants' demurrer to plaintiff's Demand for Declaratory Judgment.

IT IS HEREBY ORDERED:

1. That plaintiff is a "taxpayer" (Rev. & Tax. Code §17004) and subject to the provisions of the Personal Income Tax Law of the State of California. (Rev. & Tax. Code §§ 17001 et seq.);

2. That defendants' motion to strike plaintiff's Demand for Declaratory

Judgment is denied as moot;

3. That defendants' request for attorneys' fees (Code Civ. Proced. 128.5) and for a penalty assessment (Rev. & Tax. Code §19414) is denied; and

4. That the above-entitled action is dismissed, with prejudice.

DATED: Mar. 25 1986

/s/ Thomas C. Murphy

THOMAS C. MURPHY

Judge of the Superior Court

FILED MAR. 25 1986

FRANK S ZOLIN

COUNTY CLERK

BY E.A. DESPOL, Deputy

APPENDIX B

NOT FOR PUBLICATION

IN THE COURT OF APPEAL OF THE

STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION TWO

RICHARD J. McDONALD, Plaintiff and Appellant, V.	) No. B019631) (Super.Ct.No. NCC 28878B)
THE BOARD OF EQUALIZATION, THE FRANCHISE TAX BOARD OF THE STATE OF CALIFORNIA Defendants and Respondents	)

Plaintiff Richard J. McDonald appeals from the order of dismissal entered after the demurrer of defendants Franchise Tax Board and State Board of Equalization was sustained without leave to amend. He contends: "I. Sustaining a demurrer when fraud is alleged and jurisdiction is not proven is in error, utilizing a 'fiction of law' to make a ruling to perpetuate a fraud is also in error. II. The state cannot

utilize entrapment, fraud, non-disclosure, deceit, coercion and duress to place in effect a private revenue law which is voluntary to wilfully deprive the appellant of his fundamental personal rights and property without his knowledge or consent in conformity with the rules of law regarding fraud and within the guidelines as established by the Constitution."

On January 9, 1986, appellant filed a complaint for declaratory relief as which more than 60 pages of exhibits were attached. He sought to have the court declare:

"1. That I, Richard James McDonald, am a freeman and a sovereign individual without qualifications under the organic constitution of the Republic of the United State of America.

"2. That the plaintiff is not and cannot be enfranchised against his will and over his objections by the use of

entrapment, nondisclosure of adhesion/implied contracts, deceit, and coercion in violation of the Law of Nations, the U.S. Constitution, the Constitution of the State of California, the Law Merchant rules and all known civil and criminal laws regarding entrapment and fraud.

3. That the Board of Equalization and the Franchise Tax Board cease and desist in all illegal attempts to enfranchise the Plaintiff by the taking of his property for the purpose of raising a revenue.

4. In addition to any other relief and restitution that this court deems just and proper under the rules of Restatement, Contracts 2d. §376."

Nothing would be gained by our discussing the interesting philosophical commentary set forth in the appellant's in pro per briefs regarding the power of this

state to subject him to its Personal Income Tax Law. (Rev. & Tax. Code, §§ 17001, et seq.) For good or ill, the determinative issue in this proceeding has always been straightforward and simple. It is undisputed appellant was a California resident employed by Lockheed California Company during the 1983 tax year and that he earned $41,172 in wages from Lockheed. As such he was potentially liable for taxes (Cal. Const., art. XIII, § 26(a)) and, therefore, a "taxpayer." (Rev. & Tax. Code, § 17004.) Consequently, appellant was, and is, subject to all relevant reporting and filing requirements set forth in the Revenue and Taxation Code.

Respondents request this court to impose a civil penalty upon appellant under Revenue and Taxation Code section 19414 1/ on the grounds that his position is frivolous and that the instant appeal was brought primarily to delay payment of

his 1983 personal income taxes. Respondents previously moved the trial court to impose such a penalty. The court refused, presumably because it concluded appellant, even though misguided, was sincere. For similar reason, we likewise decline.

However, appellant should be mindful in his refusal to cooperate with the taxing authorities, not only may this, or greater, financial sanctions be imposed, he may even be eventually subjected to criminal prosecution. (See, e.g., Rev. &

---

1. This section provides: "Whenever it appears to the State Board of Equalization or any court of record of this state that proceedings before it under this part have been instituted or maintained by the taxpayer primarily for delay or that the taxpayer's position in the proceedings is frivolous or groundless, a penalty in an amount not in excess of five thousand ($5,000) shall be imposed. Any penalty so imposed shall be paid upon notice and demand from the Franchise Tax Board and shall be collected as a tax."

Tax. Code, §§ 19401, 19406.) Given the seriousness of the the choices facing him, we most sincerely urge that he consider and adopt the recommendation of all before whom he has appeared, i.e., the prompt obtaining of competent legal advice.

The order of dismissal is affirmed.

NOT FOR PUBLICATION.

/s/ Gates, J.

We Concur:

/s/ Roth, P.J.

ROTH

/s/ Compton, J.

COMPTON

APPENDIX C

ORDER DENYING REVIEW

AFTER JUDGMENT BY THE COURT OF APPEAL

2nd District, Division 2, No.B019631

IN THE SUPREME COURT

OF THE STATE OF CALIFORNIA

IN BANK

McDONALD

V.

STATE BOARD OF EQUALIZATION ET AL

Appellant's petition for review DENIED

BIRD

Chief Justice

STAMPED FILED DEC. 17, 1986

APPENDIX D

No.

IN THE SUPREME COURT
OF THE UNITED STATES
OCTOBER TERM 1986

RICHARD J. McDONALD, Petitioner

v.

THE BOARD OF EQUALIZATION,
THE FRANCHISE TAX BOARD,
OF THE STATE OF CALIFORNIA
Respondents

CERTIFICATE OF SERVICE

I, Richard J. McDonald, the Petitioner in this cause, certify:

That I have served 3 copies of the Petition for Writ of Certiorari on counsels for the respondents by depositing same in a United States Post Office mail box at North Hollywood, California, 91606, on the 27th of February, 1987, with first class postage prepaid and with the envelope addressed as follows:

The Solicitor General
Department of Justice
Washington D. C., 20530

Office of the Attorney General
State of California
1515 K. St.
Sacramento, California, 95814

Office of the Attorney General
Edmond B. Mamer
Carol H. Rehm, Jr.
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3580 Wilshire Blvd. Suite 900
Los Angeles, Ca. 90012

Supreme Court of the State of California
3580 Wilshire Blvd.
Los Angeles, Ca. 90012

Court of Appeals
2nd. Appellate District
3580 Wilshire Blvd.
Los Angeles, Ca. 90012

The Hon. Thomas C. Murphy
Burbank Superior Court
300 East Olive Ave.
Burbank, Ca. 91507

The above named parties are the only parties required to be served.

I further state to the best of my knowledge that the court's copies were enclosed in a package, properly addressed to the Clerk of this Court, and that said package was deposited in the United States

mail at North, Hollywood, California, with first class postage prepaid on the 27th day of February, 1987 which is within the permitted time of filing.

RICHARD J. McDONALD
6754 Clybourn #204
North Hollywood, Ca.
91606

State of California
County of Los Angeles

On Feburary 26, 1987, before me the undersigned personally appeared Richard J. McDonald, and proved to me to be the person whose name is subscribed to the within instrument and that he executed the same before me.